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Harvey, Richard Selden

A new factor in world
commerce

[Baltimore]

[1918]

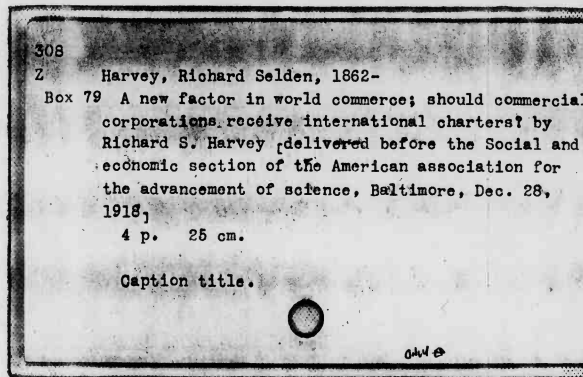
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A New Factor in World Commerce*

Should Commercial Corporations Receive International Charters?

By Richard S. Harvey, Washington, D. C.

A NEW star is shining above the legal horizon.

Although no dictionary, no encyclopaedia, no law treatise has yet greeted the new arrival with any mention, let us not be wanting in welcome to the newcomer. True to American standards of alertness and efficiency, let us on our part grant a cheerful welcome to the radiant visitor, for its beams will bring to numerous peoples helpful assurances of commercial service and international good will.

This law luminary, this daystar of a new era, is comprised in the term "International Corporation." Thanks to the wisely liberal policy of language enlargement in force among English-speaking races, the usefulness of the term is sufficient justification for its employment. The novel thoughts of today are the commonplaces of tomorrow; and after a brief interval we shall no doubt discover the expression "International Corporation" has grown familiar to our minds, through daily use, and has begun to occupy a recognized place in the current literature of those future days, soon to be here.

In a recent address by a brilliant writer and distinguished leader in the improvement of American political and civil affairs, I find this thought-suggesting passage:

"Our governmental framework has been like that of a cottage erected for a family without any provision at all for an increase in the family's size, and to which has been added from time to time wings and stories and corridors and staircases, quite unrelated and inaccessible to one another; while what we want is a structure of the old colonial type, with its broad central hall and adjoining wings, every room accessible to the center, and with every facility for successful operation."

And a little later, the same writer, Mr. R. Fulton Cutting, adds this hope-inspiring conclusion:

"We are discovering the possibility of

citizen co-operation through the agency of organization."

"The agency of organization!" That is the prime means of success in the business life of the United States; and in this momentous period of human change and progress, it behooves every thinking man to project his mind into the realms of world-commerce, and to discover in what respects "we are without any provision at all for an increase in the family's size" and to reshape our national facilities and housekeeping accordingly.

Hidden subsidies and secret aids to German commercial institutions and unfair methods that descend to depths lower than "Punic faith," are being unearthed in every quarter, until it would appear that President Wilson's words,— "If the peace presently be made is to endure it must be a peace made secure by the organized major force of mankind"—call for the exercise of that paramount "force" in reorganizing and to some extent reforming the business methods and machinery of international trade. In that way and (as I see things) by no other means, will national antagonisms, frictions and acute misunderstandings,—oftentimes the primary causes of war,—be minimized, even though they cannot be entirely removed. And toward the accomplishment of this much-to-be-desired end, we believe a system of standardized international corporations with broad charter-powers conferred, exercised and practiced under special provisions of treaties or conventions between the nations concerned, will prove the beneficent force that can solve numerous difficulties and remove many occasions for just complaint.

However, lest we fall into the vice of drawing conclusions before we have definitely established our premises, we ask permission at this stage to discuss briefly two fundamental points,—for the essential thing after all is to determine whether the plan or system we have to propose can be carried into effect without any clash or interference on the part of these essential and basic concepts.

* Delivered before the Social and Economic Section of the American Association for the Advancement of Science, Baltimore, Md. 1918.

FREE GOVERNMENT DEFINED

Concerning those forms of government which perpetuate civil liberty and free institutions, Blackstone has this to say:

"That constitution or frame of government, that system of law, is alone calculated to maintain civil liberty which leaves the subject (or citizen) master of his own conduct, except in those points wherein the public good requires some direction or restraint."

COMMERCIAL COMPANY DEFINED

Concerning our other point—private business corporations—Bouvier thus defines that artificial person:

"A body, consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members, created wholly or in part for purposes of private emolument."

It will be our present purpose briefly (in the language of surveyors) to "extend" each of these elemental phases of civilized life, and to observe whether, if at all, they clash or in any material degree interfere; or whether (as I believe), they occupy uninterrupted parallel courses.

Let us begin with certain axioms concerning the evolution of modern national existence, and of the modern business corporation, and follow the development of each, somewhat in the manner of the familiar parallel column.

PROGRESSIVE STAGES OF GOVERNMENT

First—All government consists in the surrender of some portion of individual liberty.

Second—Federation consists in a surrender of some portion of local or state government to a central authority.

Third—The League of Nations to Maintain a Just Peace calls for a further surrender to a paramount control.

STEPS IN THE ADVANCEMENT OF CORPORATE IDEA

First—In the usual form of commercial companies, an individual investor surrenders the initiative and the control of the enterprise to the corporate body, subject to a variable degree of local governmental control.

Second—Since a comparatively recent date, but with a duration no one can predict, the Federal Government has grown to be a potent, if silent, factor in practically all corporate managements and activities. Recent war-time experience in that field has taught us we cannot think locally hereafter. We have crossed that Rubicon; and (whether for good or for evil) henceforth the

Federal Government is destined to be a potential participant in corporate enterprises.

Third—In an international corporation, this national prerogative of corporation control must in its turn become subject to the power conferred by treaty or convention on some international tribunal or body—a supreme control that measurably corresponds to the paramount directing power pertaining to the International League to Enforce Peace.

LINE OF PROCEDURE NECESSARY

If (as I assume) it is apparent from this comparison that the principles of free government and of corporate management of business enterprises not only do not collide, but do actually support and assist one another, in proper hands—I shall feel encouraged to advance one step further and to outline the natural, and, indeed, necessary channel along which this new current of business progress must flow, if indeed it is to go forward at all.

First—The instituting of international commercial corporations calls for a general Federal incorporation act, available to every domestic corporation engaged in foreign trade.

Second—Next in order must come a treaty or convention, prescribing the form of the corporate charter, by-laws, etc., when it is proposed to apply for international rights; and when those preliminary requirements have been favorably disposed of, providing for the management of the enterprise, and the conservation of its property and interests in peace and in war; and specifically guaranteeing to each corporation thus privileged the right to treatment identical with that accorded to domestic corporations through (a) absence from liability to preliminary attachment, (b) the ability to employ the judicial machinery, and (c) fair treatment in all other quarters material to its successful operation.

Third—Back of these corporate bodies and at their ready disposal should be the quasi-judicial power of the League, so that in case of actual or threatened discrimination or of manifest unfairness, means for a prompt hearing by an international tribunal and a way of redress will be provided. Likewise, protection for its interests in some prescribed manner in seasons of war is a particular that must receive careful consideration.

Within the limited scope of our paper, we trust we have now disclosed convincing proof; that there is nothing

inherently impractical—much less antagonistic—in the upbuilding of a system of incorporated bodies, each empowered to do business upon equal terms with domestic companies in one or more foreign countries, upon compliance with certain requirements corresponding broadly to those contained in the general corporation laws in force in all or nearly all of the States.

The convention of Berne (operative since 1887, with extensions of rights conferred at Paris in 1897) affords international privileges as to copyrights, in numerous countries. While the United States was not among the fifteen signatories of that convention creating the International Copyright Union, it has acted in substantial compliance with the principles there enunciated and applied; and by 1914 Presidential copyright proclamations had been issued securing copyright privileges in the United States to citizens or subjects of the following countries: Austria, Belgium, Chile, China, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, France, Germany, Great Britain and the British Possessions, Guatemala, Honduras, Hungary, Italy, Japan, Luxembourg, Mexico, Netherlands and Possessions, Nicaragua, Norway, Panama, Portugal, Salvador, Spain, Sweden, Switzerland and Tunis. By a general Federal statutory provision (act of Feb. 20, 1905, as amended) trade-mark privileges in the United States are accorded to those persons who are citizens or subjects of "any foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States." Thus it will be seen that to permit the filing of duplicate incorporation papers in certain specified countries, with right to do business and to receive treatment as a domestic corporation in each of these countries, is only an extension of principles recognized as practical and actually applied in matters pertaining to trade-mark and copyright law.

CONVENTION TO FORM INTERNATIONAL COMPANIES

If more specific instances of corporations organized in the United States to operate in foreign parts are demanded, we can point to the Maritime Construction Company organized here to build and maintain a transcontinental canal at Nicaragua; and to the company which for years operated the railroad at Panama.

Still more closely in point and therefore more convincing are:

First—The Convention of Jan. 20,

1914, whereby each of fourteen countries (including the United States, and *mirabile dictu!* the Imperial Government of Germany), agreed to use its utmost endeavors in the interests of *safety of Maritime passenger traffic!* This pact goes far toward demonstrating how readily matters of current interest and material advancement are being taken up and disposed of by international conference and agreement, and the argument arises promptly and naturally—why not a convention covering the institution of international companies, with right to trade in foreign countries upon equal terms with domestic concerns, provided reciprocal rights are accorded to citizens of those lands?

Second—But most nearly in point is the International Convention of March 14, 1884, regulating the ownership and protection of maritime telegraph cables. It is obvious cables connecting two or more independent countries in every instance are subject to the laws of the several countries up to the three-mile boundary of jurisdiction, and elsewhere are under the general protection of international law, excepting insofar as treaty rights have been negotiated and placed in force.

In brief, corporations owning property of this description are naturally and necessarily international commercial corporations; and, upon compliance with certain requirements of general application the proposal I am now making merely extends and offers to all commercial corporations the principle of protective supervision embodied in the Convention of 1884; thereby conferring upon them rights substantially similar to the privileges specially and specifically enjoyed by cable companies under the treaty of 1884. When stating and defining this new field for the exercise of corporate powers, I have deliberately and advisedly circumscribed their extent; and I will ask you to note I have not suggested those rights should extend beyond privileges "substantially similar" to those conferred upon cable-owning concerns. An examination of the extent of those powers will disclose how cable companies are authorized to invoke aid and summary protection by the commander of any war-vessel of the signatory powers; but, of course, such extraordinary privileges find no place in what, in its legal aspect, will be an International General Incorporation Law. If this convenient and seasoned power of organizing corporations under a general statute is translated into terms

of international law, that is the result sought for as the ultimate objective, viz.: a feasible and convenient institution of sufficient scope to supplement, round out and complete the existing almost universal American system of franchise-acquirement. That the procurement thereof will call for negotiations and treaties is to be expected; unless (as we have seen was done in the matter of copyright privileges under the Act of 1905), we should extend generally to citizens of foreign nations the same privileges our citizens there enjoy.

EFFICIENCY IN OPERATION

In the *Saturday Evening Post* of Dec. 7, Alonzo Englebert Taylor, attaché of the American Embassy in Germany in 1916, exhaustively reviews the subject of "The Control of Raw Materials," with special attention to German methods of obtaining and maintaining supremacy in certain lines of trade; and the author draws the comforting conclusion that the bug-bear of "German efficiency" is not half-way terrifying when it is examined closely and is thoroughly understood. By way of summing up he says: "In the final analysis, control of commerce, trade and manufacture will rest upon efficiency in the operation of the several factors"—factors in which Americans have achieved high records in competition with German traders in those relatively few industries wherein we have earnestly courted control in foreign trade.

"Efficiency in operation," that is America's long suit! If our success in foreign fields of trade depends upon that quality, we are *sure* to win.

But while the world is so palpably in a state of flux—why not also maintain our capital in a liquid state? Why not, by an authorized type of International Commercial Corporation provide a safe and convenient channel directed to those places where that capital is most required?

In these busy times the investor should not be worried or deterred by obstacles of obscure foreign laws. The complications of business are sufficient of themselves; why add a needless fence, hurdle-like, over which investors must leap to obtain their goal—and this, too, in a course which presumably will lead them to only a fair return, while the venture will certainly enrich the country which secures American capital for its development?

And now, as we draw near our conclusion, we would add that many minor objections yield readily to intelligent and sympathetic treatment.

Thus, one or more representative upon the Board of Directors will assure to local interests in each country full information as to what is transpiring; and will, with equal certainty, maintain their right to urge arguments and press policies upon the consideration of the management. There is nothing inherently difficult—far less, dangerous or prohibitory—upon the score of representation. That question will readily find its answer; and a working basis will be evolved before an extended period of actual experience has elapsed.

INTERNATIONAL DIFFICULTIES LESSENED

Instances are bound to occur where freight, labor conditions and tariffs singly or in combination do not admit of export or import trade in articles which afford reasonable prospects of a satisfactory return in the local market; but frequently in these situations, were foreign factories established by American capital and run in accordance with American standards of efficiency in equipment and management, they would create or revive a profitable industry. When such business opportunities occur, the American investor no longer will sit passively by; but how much simpler his course if, instead of wrestling with the intricacies and perhaps adverse provisions of foreign laws, he can simply conform to certain treaty requirements, and say—"On these rights I stand! Powers and privileges have become vested in my corporation in accordance with rights contained in solemn treaties, duly ratified and confirmed. My company possesses the right to demand impartial investigation and redress when any grievance is alleged—with right to conservation of assets if war-time conditions arise. With these ample powers at command, I will journey forth like my ancestors, and will conquer new interests in new lands!"

May this young but virile thought grow and justify its existence (even at the Peace Table at Versailles), perhaps leading men of future years to say—

"The little seed*****"

"Has now become a bulk of
spanless girth,

"Which shoots on every side a
thousand mighty arms."

**END OF
TITLE**